

No. 9 [REDACTED] 398

Miss Supreme Court, N. Y.
FILED
MAR 3 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

WILLIAM CRAMP & SONS SHIP & ENGINE
BUILDING COMPANY,

Petitioner,

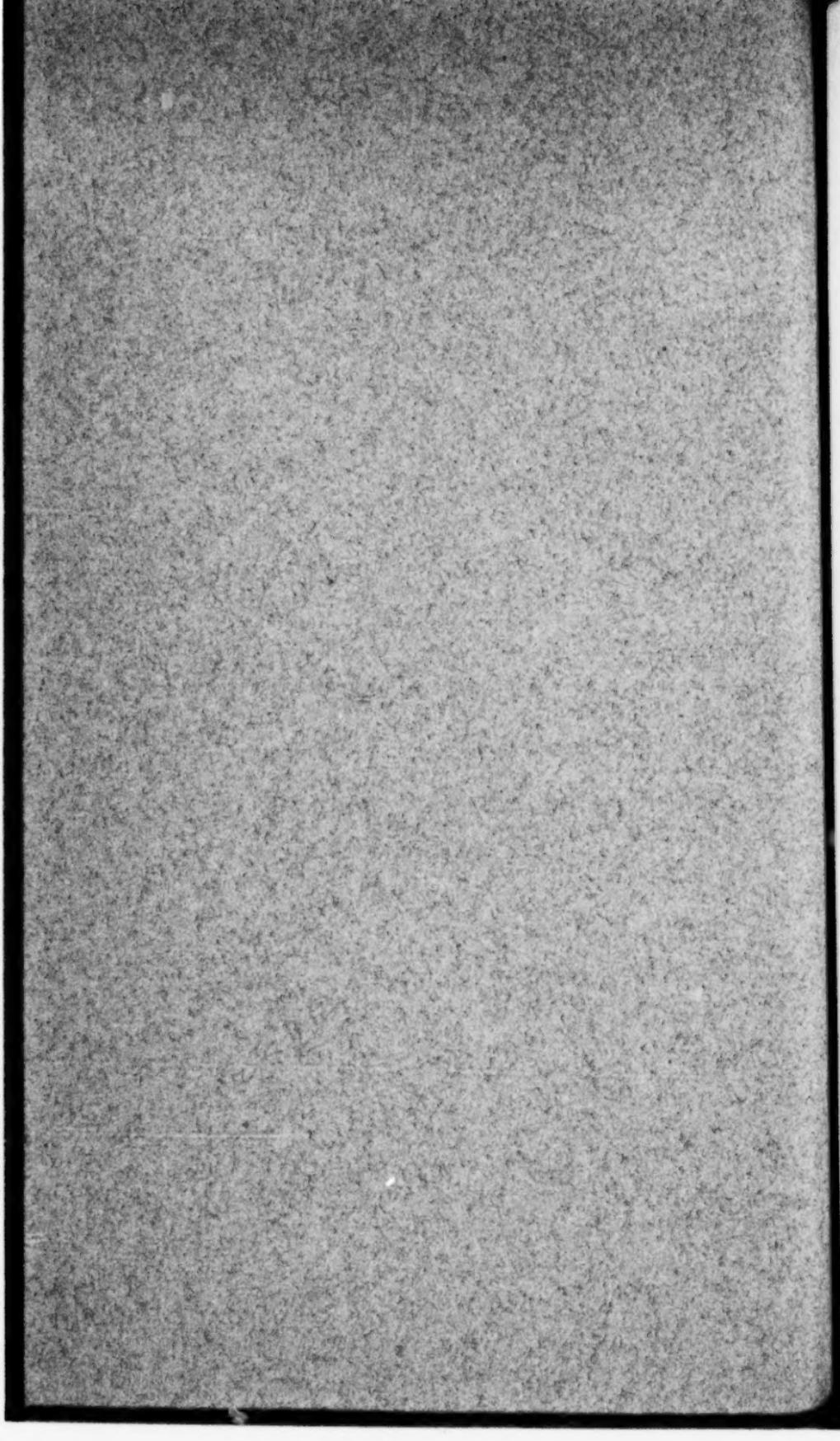
vs.

INTERNATIONAL CURTIS MARINE TURBINE COMPANY AND CURTIS MARINE TURBINE COMPANY OF
THE UNITED STATES,

Respondents.

MEMORANDUM IN REPLY TO RESPONDENTS' BRIEF.

C. V. EDWARDS,
A. M. BEITLER,
Counsel for Petitioner.



SUPREME COURT OF THE
UNITED STATES,

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WILLIAM CRAMP & SONS SHIP &
ENGINE BUILDING COMPANY,
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vs.

INTERNATIONAL CURTIS MARINE TUR-
BINE COMPANY AND CURTIS MA-
RINE TURBINE COMPANY OF THE
UNITED STATES,

Respondents.

**MEMORANDUM IN REPLY TO RESPOND-
ENTS' BRIEF.**

Respondents' brief, at the bottom of page 2 and the top of page 3, refers to two former petitions (228 U. S., 646, and 234 U. S., 755). These petitions related to other destroyers and other contracts than those here involved, and neither petition made any reference to the time of completion of the destroyers, because the contracts were entered into in 1908 and the time of completion did not appear in the record.

Respondents' brief is in error in implying, on page 7, that the details of turbine design and construction here in question have heretofore been

published in the Journal of the American Society of Naval Engineers. To the best of the knowledge and belief of petitioner's counsel, such details have never been published.

The respondents' brief urges that this case differs from the case of *Marconi v. Simon* in that it does not here appear that (a) the Government knew of the patent in suit, or (b) whether the plans, specifications and drawings originated with the Government, or (c) whether petitioner's contract could not be complied with without using the patent in suit. If the case at bar does in fact differ from the Marconi case in either of these particulars, it is submitted that it is of the highest importance to the Government and those dealing with it under similar circumstances to have their status determined at the time the Marconi case is decided. If the liability of the Government under the Act depends upon the claimant proving specific knowledge of the patent, other than that presumed from the fact that the patent is a public record, or upon the claimant proving that the design originated with the Government, then it is submitted that it is in the interest of the public that the law on this subject be made clear.

As to the question of the defendant (petitioner) in the case at bar being able to comply with its contract without employing the patent in suit, it may be said that plaintiffs' (respondents') case rests upon its assertion to the Master (R., 8, fol. 32) that

"the turbine engines installed in these ships were built in accordance with the proposal, drawings, plans and specifications forming a part of these contracts,"

and upon the truth of its declaration in its petition to the Circuit Court of Appeals (R., 47, fol. 188), that it offered the same to the Master

"intending to show by these plans, specifications and drawings that the turbines called for by the said contracts are substantially identical with those held by this Court to be infringing devices."

which assertion is repeated in respondents' brief, p. 3.

The contracts in question recite (R., 59) that the drawings, plans and specifications have been duly provided, adopted and approved by the Navy Department, and (R., 60, par. *First*), require petitioner to construct "in conformity with the aforesaid drawings, plans and specifications" one torpedo boat destroyer to be provided and fitted with engines "in all respects as described in the annexed drawings, plans and specifications."

It is therefore evident that respondents' charge against petitioner is necessarily based upon the allegation that the turbines called for in the contract will infringe.

Respectfully submitted,

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